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OFFICE OF PETITIONS

In re Application of
Evgeny Alexeevich Nikiforov, et al.
Application No. 10/083,491
Filed: February 27, 2002
Attorney Docket No. 12396.00

ON PETITION

This is a decision in response to the petition, filed July 3, 2007, under the provisions of 37 CFR 1.181 to withdraw the holding of abandonment.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to timely pay the issue and publication fees on or before November 1, 2006, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed August 1, 2006. A Notice of Abandonment was mailed on May 25, 2007.

Petitioner argues that the abandonment should be withdrawn since the issue and publication fees were timely submitted in response to the Supplemental Notice of Allowability mailed December 27, 2006. Petitioner suggest that the period for paying the issue fee was reset, noting that the Supplemental Notice of Allowability states that "Applicant has **THREE MONTHS FROM THE 'MAILING DATE'** of this communication to file a reply complying with the requirements noted below." Emphasis added.

It is initially pointed out that the "THREE MONTHS FROM THE 'MAILING DATE'" period within which the issue fee must be paid was set in the Notice of Allowance mailed August 1, 2006 and, because this period is prescribed by statute, it cannot be extended. See 35 U.S.C. 151. The Supplemental Notice of Allowability did not operate to reset the period for paying the issue fee. In fact, since no items were *noted below* on the Supplemental Notice of Allowability mailed December 27, 2006, a response to this communication was not necessary from Applicant at all.

In view of the above, the request to withdraw the holding of abandonment is dismissed.

Petitioner is strongly encouraged to consider filing a petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application instead of filing a renewed petition under 37 CFR 1.181 or a petition under 37 CFR 1.137(a).

Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the \$770 petition fee.

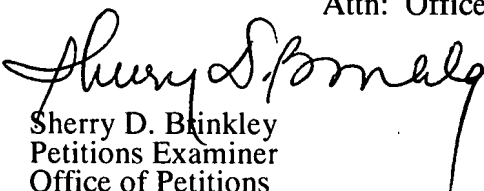
The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

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